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CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF: INDEPENDENCE OF THE JUDICIARY, ADMINISTRATION OF JUSTICE, IMPUNITY

Written statement* submitted by the Asian Legal Resource Centre (ALRC), a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[15 January 2002]

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*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Impunity in Sri Lanka

1. In Sri Lanka there is near complete impunity for state officers alleged to have caused serious crimes such as murder, torture, disappearances, war crimes and crimes against humanity. The very judicial framework of the country in fact promotes and accommodates impunity. The present 1978 Constitution of Sri Lanka has placed all power in the hands of an executive president thus displacing the holders of power within the law enforcement sections of the government. The independence of the Attorney General (AG)—the chief prosecuting officer in the country—and the Inspector General of Police (IGP) has thus been deeply undermined.

2. The impact of impunity has spread into all areas of life. From over 30,000 cases of disappearances reported to state-appointed commissions of inquiry only about 500 cases have been prosecuted and even these have in most cases been conducted negligently. Cases of massacres—such as the Bindunuwewa Massacre (see E/CN.4/2001/NGO/70) in which about 60 armed law enforcement officers oversaw the murder of 24 young rehabilitation camp detainees—led to no satisfactory criminal action against all the culprits. Elections in Sri Lanka have seen much violence, and the General Election held on 5 December 2001 was considered the bloodiest to date, resulting in over 2,000 complaints of abuse and around 60 persons killed. Among them, the case of 10 persons killed in cold blood at Udathalawinne, Kandy district, has not yet reached a satisfactory conclusion. There are also many cases of well-known persons killed, such as BBC journalist M. Nimalarajan and prominent Tamil politician Kumar Ponnambalam.

3. More alarming still are the many cases of torture about which much evidence has been placed before the prosecuting authorities without subsequent action. Sri Lanka incorporated the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment into domestic law under Act No. 22 of 1994. This Act provides a minimum period of seven years' imprisonment for torture, however no officer has been punished under this law despite the police's endemic use of torture and Supreme Court findings against many. There are numerous other cases of rape and murder in which state officers have been alleged culprits but have been able to escape from the law.

4. The reason that impunity in Sri Lanka occurs to this extent is due to the virtual collapse of two institutions: the police and the prosecution branch, which functions under the Attorney General. Police investigations into offences allegedly committed by other police suffer from the loyalties that police officers exercise on behalf of each other. For example, investigation files on senior police that have been passed from the Missing Persons' Unit (MPU) of the AG's Department to the Disappearances Investigation Unit of the Police Department have even after many years not been returned to the MPU. Related records routinely kept at police stations are destroyed despite instructions by the authorities—including the IGP—to keep them protected till criminal investigations are over. No action has been taken against those who have caused their destruction. Police tampering with documents has become so common that a November 2001 Supreme Court judgement observed that

   > it is unsafe for court to accept a certified copy of any statement or notes recorded by the police without comparing it with the originals. It is a lamentable fact that the police who are supposed to protect the ordinary citizens of this country have become violators of the law, and may ask with Juvenal, quis custodiet ipsos custodes—who is to guard the guards themselves?

5. The failure of the supervisory functions of high-ranking police officers is due to the influence exercised over the leadership of the police force by the political authorities. The Seventeenth Amendment to the Constitution of Sri Lanka, certified on 3 October 2001,

has, among other things, created a National Police Commission. However for this Act to become effective it is necessary to appoint the Constitutional Council which was also promulgated by the same Act. The Constitutional Council, once appointed, will have powers to appoint the commissioners for the National Police Commission. Thus were it to proceed, the speedy appointment of the Constitutional Council followed by the National Police Commission could create an opening to address some of the more important problems impeding and obstructing independent criminal investigations in the country.

6. The other institution that has contributed to the practices of impunity prevailing in the country is the prosecution branch under the AG's Department. Several state-appointed commissions since 1946 have consistently recommended the establishment of an independent public prosecutor's office, however this recommendation has not been carried out—apart from a short attempt in the early 1970s. The creation of an effective independent prosecutor's branch is an essential condition to ending the climate of impunity. The Vigil Lanka Movement—an association of lawyers in Sri Lanka—has held rightly that

> The practice that has got established over the years is that the prosecutor—officially the Attorney General—deals with prosecutions only and exercises no function relating to investigations. In practice, crimes which are not considered grave are also prosecuted by the police. In many jurisdictions, the situation has now changed, with representatives of prosecuting departments playing a greater role in advising on investigations into crime and preparing prosecutions at a much earlier stage before receipt of the completed files from the police. Adoption of a similar practice would improve the quality of criminal investigations in the country. Such advice from professional prosecutors can also go a long way to elimination of torture. Often, torture is taken as an unavoidable component in police investigations. This primitive method of investigation needs to be replaced with more sophisticated forms of investigation with better use of forensic facilities. In those circumstances, the intervention of professional prosecutors will also be helpful in instilling professional habits of proper investigation on police investigators.

7. The judiciary too has suffered setbacks in recent times. A November 2001 report by the International Bar Association arising from the visit of a delegation to Sri Lanka has accurately observed that the perception of a lack of independence of the judiciary was in danger of becoming widespread and that it was extremely harmful to respect for the rule of law by ordinary citizens. It was concerned that not only is there a perception that the judiciary is not independent, there may indeed be some basis in fact for the existence of such a viewpoint in relation to a minority of the judiciary. There were also serious concerns expressed about the discipline, retirement, appointment, transfer and promotion of judges under the auspices of the Judicial Services Commission (JSC). The delegation was not confident that the JSC is acting entirely without outside interference.

8. The Asian Legal Resource Centre is greatly concerned by the alarming degree of impunity prevailing in Sri Lanka. The Centre is aware of the tremendous frustration of the general public there caused by this situation. Without urgently required remedies, the enforcement of any rights will become increasingly difficult in Sri Lanka. The Centre therefore urges the Commission to apply all appropriate measures to the Government of Sri Lanka that it might make the appropriate reforms before conditions in the country deteriorate any further.